RR2d 237 (injunction may lie under Sections 207-208 if monetary damages do not adequately compensate an aggrieved party).

Sections 312 and 501-504. The Conference Report states, without any reservation, exception or limitation, that the "remedies available under the Communications Act" are available to enforce compliance with Section 255. Section 312, in one form or another, has been on the law books since formation of the Federal Radio Commission in 1927 and continuing upon formation of the FCC in 1934. Sections 501-502 date back for a similar period of time; Sections 503-504 date back to an amendment of the Act adopted in 1960, following which a vigorous monetary forfeiture program has ensued.

Subsection (a) of 312 provides for revocation of FCC authorizations for willful or repeated violation or failure to observe any provision of the Act or FCC regulations implementing the Act. Some members of the service provider and manufacturer communities to which Section 255 applies, do hold such FCC authorizations.

Subsection (b) of 312 provides for issuance of cease and desist orders addressed to "anyone" who has violated or failed to observe any provision of the Act or implementing regulations. In the appropriate case, this subsection can reach any service provider or manufacturer to which Section 255 applies.

Subsection (b) of 503 provides for monetary forfeitures assessed against any person who willfully or repeatedly fails to comply with any provisions of the Act. Section 504 vests collection responsibilities, which involve federal district court review of the Commission's determination, in the Department of Justice. In the appropriate case, these forfeiture provisions can also reach any service provider or manufacturer to which Section 255 applies.

12. Complaint Process

Filing Fees. As an organization representing consumers, SHHH supports the Commission's proposal not to require filing fees for complaints directed at equipment manufacturers and service providers that are not common carriers. We understand that the Commission is required to impose a filing fee for formal complaints directed at common carriers under the Communications Act, but may waive the fee if doing so would be in the public interest. Consumers should not be charged a fee for efforts to gain access to telecommunications products and services. This is a different situation from that of companies filing complaints against each other for business purposes. Therefore, it is in the public interest to waive the filing fee.

Standing Requirement. The Commission has proposed that there be no standing requirement. This deviates from other accessibility laws, which allow only individuals with disabilities, or organizations representing them, to have standing. Leaving standing open can encourage complaints by companies against other companies. Section 255 is intended to protect individuals with disabilities against discrimination in

telecommunications. It was not intended to be used by companies to file complaints against each other. There should be a standing requirement for filing complaints.

No Time Limit. SHHH supports the Commission's proposal not to establish any time limit for filing complaints. A consumer may not know whether a product or service is fully accessible until they purchase it and start to use it. This may be any length of time after the product or service is introduced. Therefore, it is important that no time limit be set for when a complaint can be filed.

Complaints Against Manufacturers. Congress intended that Sections 207 and 208 apply to enforcement of Section 255 without distinction between service providers and manufacturers who might come within the definition of "common carriers" and those who might not. Subsection (b) expresses the obligations of manufacturers; subsection (c) expresses the obligations of service providers; subsection (e) grants the Commission exclusive jurisdiction to deal with all complaints regarding compliance with these obligations, without regard to whether the complaints are addressed to manufacturers or service providers or both; and the Conference Report interpreting subsection (e), likewise without differentiating between manufacturers or service providers or both, states that Sections 207-208 are available for dealing with Section 255 complaints.

This clear legislative intent is reinforced by the reality that, in the rapidly changing present and future telecommunications worlds, to which the Telecommunications Act of 1996 is addressed, the boundary lines between classic common carriers and others have

become blurred and most likely will increasingly become more blurred in the future. S. Rep. 104-23, 104th Cong., 1st Sess. (1995) at 2-10, 37-39; H. Rep. 104-204, 104th Cong., 1st Sess. (1995) at 48-55, 97-112; statement of Senator Leahy in the floor debate of the Telecommunications Act of 1996: "I think Congress has been behind the curve in telecommunications. We need to update our laws to take account of the blurring of the formerly distinct separation of cable, telephone, computer and broadcast services...". Cong. Rec. S8067 (daily ed. June 9, 1995). For the most recent, stunning example, see the attached article "AT&T Buys TCI, Looks to One-Stop Future", in *The Washington Post,* June 25, 1998.

Regulations Governing Complaints. The current grid of regulations regarding complaints under Sections 207-208, updated in 1988, is generally suitable for enforcement of Section 255. The modified grid of regulations, announced in 1997 and currently the subject of reconsideration and court appeals, with strengthening of discovery provisions, also is generally suitable for enforcement of Section 255. The Commission's generic rules for handling informal complaints, not otherwise covered by the regulations addressed to specific regulatory programs, obviously will not suffice if that is intended as a permanent means of dealing with complaints under Section 255. The Commission can point to no other regulatory program that it administers in which these catchall informal complaint rules are the sole remedy for aggrieved parties.

Need for Respondents to Produce Relevant Documents and Information. Citizens who file complaints often must rely on circumstantial evidence concerning the actions

of respondent parties relative to compliance with legal obligations. The vast majority of the relevant evidence, if not all of it, will likely be in the private possession of the respondent service provider or manufacturer or both. The modified grid of regulations announced in 1997 recognizes this and allows complainants to rely on circumstances for which they do not have first-hand information, so long as the basis for their complaints is set forth fully. However, under those regulations, the responding parties need only provide information and documents on which they rely for their position, which allows them to pick and choose the evidence that best serves their interests. The better and fairer course is to require the respondents to provide documents and information that are relevant to the complaint rather than only those documents and information on which they choose to rely. Indeed, the courts have held that in litigation situations, where relevant documents within the private possession of a party are withheld, the presumption may be made that those documents, if produced, would be adverse to that party's interests. Interstate Circuit, Inc. v. United States, 306. U.S. 208 (1938).

Five Month Limit. We believe Congress intended that the five-month deadline for agency action (on complaints under Section 208) applies to complaints relative to Section 255. That deadline applies to investigations of "practices" of parties governed by the section. While the previous 12-month deadline under subpart (b) of Section 208 may have been intended to apply only to tariff matters when enacted in 1988, since that time much of the nation's telecommunications activity has been de-tariffed. Moreover, in the Telecommunications Act of 1996, Congress established an open competition landscape in which additional, vast de-tariffing has taken and is taking place. Further,

in the Telecommunications Act of 1996, Congress cut the 12-month deadline to five months along with a very large number of other statutory time lines based on the perception by Congress that the Commission has been taking too long to transact its business. Under these circumstances, if Congress intended the five-month deadline to apply only to the narrow category of relatively few tariffed "practices" that remain in today's telecommunications world, it surely would have said so. In identifying Section 208 as an enforcement mechanism for Section 255 complaints, Congress would have identified only subsection (a) of 208. Instead, Congress identified the entire Section 208 including subsection (b) containing the five-month deadline for action on complaints regarding "practices" of a respondent party.

The passage of time before action is taken on a Section 255 complaint can be specially harmful. Complaints for a traditional Title 11 matter such as the reasonableness of rates charged for telecommunications services often are remedied by an ultimate monetary award including interest accruing during the time period of the delay. Complaints under Section 255, if unduly delayed, can cause incalculable harm to consumers with hearing loss that will never be compensated by an ultimate monetary award. Already, more than two years have passed since enactment of Section 255. This has been, and will continue to be a time of explosive growth in the development, manufacture, marketing and provision of telecommunications equipment and services. During the time period when a Section 255 complaint lies pending and unacted upon before the agency, that explosive activity will continue. The complaint may ultimately be determined to have merit, yet the non-conforming equipment/services complained of

proliferate and have become imbedded in the telecommunications system, causing harm from a violation of the statute that cannot be undone. Non-conforming equipment/ services are in the system and may remain there for years to come. Experience has shown that attempts at "education" of consumers with disabilities about a nonconforming product or service to be avoided is no substitute for preventing the nonconforming activity in the first place.[1]

While injunctive relief is available under Section 208, the basis for that is often difficult to establish in advance of the adjudication of a complaint on its merits. Moreover, to enjoin equipment/service pending ruling on a complaint, which ultimately is held to be without merit, is no more fair to the manufacturer/service community than the unfairness to consumers with hearing loss of allowing equipment/service to go forward when the complaint ultimately is upheld. The answer is for the Commission to be prepared to act promptly within the statutory deadline.

Formal Complaints. Formal complaints should not be conditioned on Commission approval. While it is hoped that most concerns will be addressed in the fast-track procedure or in resolving informal complaints, parties who have standing in the matter must have the right to go forward with a formal complaint procedure if the matter warrants it and they have the means to do so. Otherwise, the Commission would have a veto power over the exercise of a procedure that historically has provided discovery

[1] For example, currently many wireless phones do not include telecoil compatibility as built-in options. Educational efforts by SHHH and other organizations cannot eradicate the continuing purchase of these phones by hearing aid users and the ignorance of the issue itself by audiologists who counsel such users.

and other rights essential for the protection of citizens in dealing with regulated industries.

If Congress wanted to so circumscribe the ability of people with disabilities to seek enforcement of Section 255 by the Commission, it surely would have said so. To the contrary, the Congress made clear that the venerable complaint and remedy procedures under Section 207 and 208 would be available.

Fast Track Problem-Solving Phase. The Commission states that the "fast-track" process is the heart of their proposal. We like the fact that the Commission is proposing to assist consumers with informal complaints and facilitate resolution of problems as quickly as possible. How fast this realistically can be accomplished is the issue. Even assuming that the company has already set up internal processes for monitoring access, it may well not be possible for a company to assemble the documentation in five days. Having said that, we also do not want to drag out the process if the complaint can be easily resolved and there is a solution that would enable the consumer to get access quickly. Therefore, we recommend giving companies ten working days to respond on the fast track. We also believe there should be an outside limit on the length of this fast-track period; we recommend that it not extend beyond a maximum of 30 days. Extensions beyond the initial ten days may be requested but the process should be brought to a close or moved into the informal or formal complaint process at 30 days.

There may be situations in which a complaint has been registered against a particular company before and a pattern and practice is emerging of the company making no serious efforts towards accessible products and services. In such instances, consumers should be advised to skip the fast track and go to the informal or formal complaint process directly.

The complainant should be notified that a complaint has been referred to a company in the fast track, and they should also be given information about the time expected for a response and any other action the Commission intends to take. In the event that the complaint is not resolved, the consumer should have the right to proceed to dispute resolution at 30 days or before.

The Commission proposes establishing a central Commission contact point for all Section 255 inquiries and complaints. In order to ensure that consumers are aware of the opportunity to address inquiries and complaints to this central contact point, the Commission will need to advertise and disseminate widely the 800 number to call. In order for the Commission to be responsive to consumers' inquiries, the call center staff handling complaints should have expertise not only in Section 255 but also disability access issues, including other disability laws. They also need to be trained in communicating with consumers in a variety of formats including TTY, relay, and Braille. Such staff should also be trained in communication techniques to facilitate the contact with individuals with a variety of disabilities. The Commission should initiate a campaign to educate consumers about Section 255. Technical assistance materials

should be developed and disseminated widely. The information should include the 800 number to contact the Commission; the requirements under Section 255 for telecommunications service providers and manufacturers; procedures for filing complaints; contact information for manufacturers and service providers among other things.

13. Defenses to Complaints

Product vs. Product Line. We agree with the Commission's interpretation that Section 255 requires manufacturers and service providers to consider providing accessibility features in each product they develop and offer. Section 255 is designed to change the way products and services are manufactured and delivered. It is intended to be the impetus to have accessibility on the radar screen when engineers are designing new products and services. The ultimate goal is to have products and services universally designed for multiple users and away from the need for accessories and assistive technology. When a company has truly attempted to make each product and service as accessible as possible during product development and has demonstrated those good faith efforts, we agree with the Commission that this is the starting point of a readily achievable defense. In the event that this has been found to be not readily achievable, only then do we believe it is reasonable to do a product line analysis. Product line should not be the trigger for decisions on providing access features at the outset. Rather, product line should be the second tier approach when product by product has failed. At that point, industry may take into account the accessibility features of other functionally similar products that are already offered or may be

offered, so long as such a product line analysis increases the overall accessibility of the provider's offerings.

There is also the pricing issue. A product line offering should not be at the low end or the high end of a product line. The consumer should not be forced to buy the cheapest and most feature-slim option, nor the most expensive and feature-rich product in order to have an accessible product or service they can use.

14. Penalties for Non-Compliance

The Commission proposes, given the importance of the accessibility mandate, to employ the full range of penalties available under the Communications Act in enforcing Section 255. The development of the law of monetary damage to a complaining party caused by a violation of Section 255 by a respondent party must be developed on a case by case basis. It is anticipated that most remedies for such violations will be injunctive relief and cease and desist orders. Given the Commission's effective use of monetary forfeitures in broadcast and other areas under Section 503 of the Communications Act, with collection responsibility in the Justice Department under Section 504, an aggressive forfeiture program may also be useful in the administration of Section 255.

The Commission seeks comment on whether it has a basis to order the retrofit of accessibility features into products that had been developed without such features, where their inclusion would have been readily achievable. Retrofit should be pursued as a remedy. Retrofitting is not a winning situation for either industry or consumers. It

is hoped that companies which are forced to retrofit will recognize the importance and benefits of considering access at the outset of their design and development.

15. Conclusion

The need for regulations to implement the requirements of Section 255 are critical. SHHH appreciates the opportunity to submit comments in this very important proceeding.

Respectfully submitted,

Donna L. Sorkin
Executive Director
Self Help for Hard of Hearing People, Inc. (SHHH)
7910 Woodmont Avenue, Suite 1200
Bethesda, Maryland 20814
301-657-2248 Voice
301-657-2249 TTY

Of Counsel:
Gene A. Bechtel
Bechtel, & Cole, Chartered
1501 L Street N.W., Suite 250
Washington, DC 20036
202-833-4190

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FINAL

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AT&T Buys TCI, Looks to One-Stop Future

By Paul Farhi
Washington Post Staff Writer

AT&T Corp. formally announced its $48 billion takeover of cable TV giant Tele-Communications Inc. yesterday, vowing to become the one-stop provider of a dazzling array of telecommunications services to households across the country.

The immediate winner in the deal was TCI's chairman, John C. Malone, who will receive AT&T stock worth an estimated $15 billion for stock he personally owns or votes in trust for TCI's late founder, Bob Magness. TCI's other public shareholders will receive AT&T stock worth almost $51 per share, a premium of nearly 32 percent over TCI's Class A stock closing price on Tuesday, and nearly five times the value of the shares only 20 months ago.

Malone and AT&T Chairman C. Michael Armstrong promised yesterday that millions of residential customers will ultimately benefit from the companies' marriage, too. By coupling TCI's cable connections with its own long-distance lines and familiar brand name, AT&T said it will someday be able to offer the first major competition to the regional Bell phone companies, which now hold a near-monopoly on local phone service.

What's more, AT&T envisions a day when customers can obtain, via a single monthly bill, all of the major telecommunications services: long-distance, cellular and local phone service, high-speed Internet links, as well as pay-per-view mov-

See AT&T, *A9, Col. 1*

AT&T's C. Michael Armstrong takes questions about the deal by phone.

AT&T Vows Array Of Services

AT&T, *From A1*

ies, ESPN's game of the week, and new types of electronic shopping.

Said Malone at a news conference in New York: "If you want to order an extra phone line, all you'll have to do is point and click. . . . If you're watching an entertainment program and want to order Viagra, all you'll have to do is point and click." He added: "We're going to make it easy to use . . . [and] packaged in a way so that the consumer gets a terrific deal."

Combined, the companies will have an impressive reach. AT&T now serves about half of all residential long-distance customers, although AT&T must rely on local phone firms such as Bell Atlantic Corp. to get to those customers' homes. TCI, meanwhile, serves about 10.5 million cable households. But its wires pass by a total of 17 million households. It also partially owns companies, such as Cablevision Systems Corp. of New York, whose wires pass by another 16 million households—giving AT&T potential direct access to as much as one-third of all the nation's households.

D.C. residents may be among the beneficiaries of AT&T's plan to upgrade services, since TCI controls the local cable provider, District Cablevision. But Robert L. Johnson, who is chairman of the partnership that owns a portion of the D.C. system, said yesterday that it might be a candidate for sale because it doesn't fit easily into TCI's cluster of systems in other metropolitan areas.

ATT is hoping regulators will view the deal as a spur to stalled local phone competition. Analysts said, however, that it could give the regional Bells—which were spun off from AT&T in 1984—a potent argument that they should now be allowed into the long-distance business. And AT&T will still need the cooperation of its local phone rivals to serve the two-thirds of the country TCI's cable won't reach.

The creation of the "one-wire world" that Malone and Armstrong described yesterday is likely to re-

Anatomy of a Deal

AT&T has agreed to buy Tele-Communications Inc. in a $48 billion deal that includes the assumption of $11 billion in debt and $5.5 billion in other transactions.

AT&T	TCI
■ **Incorporated:** 1885	■ **Incorporated:** 1968
■ **Headquarters:** New York City	■ **Headquarters:** Englewood, Colo.
■ **Customers served:** 90 million	■ **Households served:** 14.4 million
■ **1997 revenue:** $51.3 billion	**1997 revenue (with affiliates):** $7.8 billion

Terms of the $32 billion stock swap portion of the deal:

Shareholders of Class A stock in TCI will receive about $51 in AT&T stock (0.7757 shares of AT&T) for each share owned, based on AT&T's closing price of $65.37½ the day before the deal was announced.

Shareholders of Class B stock (mostly Malone) will receive about $56 in AT&T stock (0.8533 shares of AT&T) for each share owned.

AT&T shareholders, including the former holders of TCI, will eventually also receive a share of the new AT&T Consumers Services stock on a one-for-one basis.

Shareholders of the TCI affiliates Liberty Media Group and TCI Ventures Group will receive shares tracking the performance of a merged entity known as Liberty Media Group.

If the merger is completed, the new structure will be:

■ **AT&T, the holding company,** including global business communications and wholesale network services and AT&T consumer services. C. Michael Armstrong will remain chairman and CEO.

■ **AT&T Consumer Services,** combining telephone, cable and Internet services. John Zeglis, AT&T's current president, will be chairman and CEO.

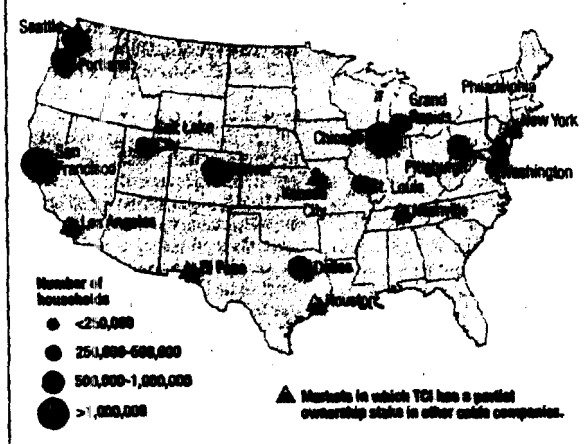
■ **Liberty Media Group,** combining TCI's cable programming and technology investments units. Also will get $5.5 billion in cash from certain sales to AT&T. John Malone, TCI's current chief, will be chairman.

SOURCES: The companies, Bloomberg News

THE WASHINGTON POST

The TCI Market

TCI directly serves more than 10.5 million households; through partnerships with other cable companies, it has partial ownership of companies that serve about 33 million cable households.



BY LOUIS SPIRO—THE WASHINGTON POST

AT&T's competitors say.

Investor worries about this drain on future earnings drove down AT&T stock, the most widely held in the country, which fell $5.37½ yesterday to close at $60 on the New York Stock Exchange. TCI's Class A shares, in contrast, rose $1.06, to $39.75, on the Nasdaq Stock Market.

Forecasting the telecommunications future has proven notoriously frustrating. Malone himself told an industry conference in 1992 that cable customers would soon have improvements have failed to materialise.

Phone companies also made their own unfulfilled promises about the "convergence" of telecommunications services. Bell Atlantic—whose deal to buy TCI foundered in 1993—launched two unsuccessful experiments in delivering TV shows, one over copper phone lines and another over so-called "wireless" digital relay stations.

For its part, AT&T last year abandoned an effort to market DirecTV's satellite TV service through

consumers, should be easier.) It also made an expensive—and largely unsuccessful—foray into the computer business in 1991, when it bought NCR Corp. for $7.4 billion.

Both Armstrong and Malone vowed yesterday that this time will be different.

They said AT&T would be able to offer phone service over some of TCI's cable systems within 18 months. Upgrades of TCI's network that will enable consumers to receive two-way services, such as lightning-fast connections to the Internet, will be complete by the end of the year 2000, they added.

But some doubt those timetables. "It's going to be a while before these things are generally available," said William Esrey, chief executive of Sprint Corp., one of AT&T's main long-distance rivals and a company that once considered a cable-phone partnership with TCI and two other major cable companies.

"TCI's [network] is not in great shape," though its cable systems have improved, Esrey said. "It's not that the cable plant can't be made more reliable. It'll just take time."

When TCI's wires do become capable of offering local phone service, AT&T may be required to lease some of their capacity to competitors, under terms of the Telecommunications Act of 1996.

Steve Case, chief executive of

ment: "We look forward to entering into a broadband reseller agreement with AT&T once the merger with TCI is complete, and we look forward to entering similar agreements with other cable companies as they, too, embrace a truly 'open cable' approach."

In light of all this, Sprint's Esrey questioned whether AT&T was paying too much for TCI. In addition to the $31.8 billion in stock it will pay for TCI's Class A and B shares, AT&T will take on TCI's $11 billion in debt, plus lay out $5.5 billion more to buy back TCI's interest in Teleport Communications Group Inc. and At Home Corp.

All told, AT&T reckoned the value of the deal is $48 billion—or a little less than twice the annual revenue for the entire cable industry.

The buyout of TCI will apparently mean a greatly reduced role for Malone, perhaps the most powerful man in the cable industry and its best-known figure after Time Warner Inc. Vice Chairman Ted Turner.

Although Malone will be a major AT&T shareholder and a member of the AT&T board, his main job will be running Liberty Media Corp., a spin-off from TCI that holds its minority investments in such cable networks as Discovery and Black Entertainment Television. Said a longtime Malone colleague, "It looks to me like John has found his exit strategy."